UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

IN RE:	.	Case No. 23-13359-VFP
	.	
BED BATH & BEYOND, INC.,	.	M.L.K. Federal Building
et al.,	.	50 Walnut Street, 3rd Floor
	.	Newark, NJ 07102
Debtors.	.	
	.	June 14, 2023
. . . . .	.	11:07 a.m.

TRANSCRIPT OF FINAL DIP ORDER, ALIXPARTNERS RETENTION APPLICATION, ASSUMPTION AND ASSIGNMENT MOTION OF CERTAIN LEASES TO WORLD MARKET
BEFORE HONORABLE VINCENT F. PAPALIA
UNITED STATES BANKRUPTCY COURT JUDGE

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I N D E X

THE COURT: Okay, good morning. It is Wednesday, June 14th, 2023. This is the United States Bankruptcy Court for the District of New Jersey and we are here on the case of Bed Bath & Beyond Inc., 23-13359 and various matters on the notice of amended agenda that was sent out it looks like yesterday right around midnight.

MR. FIEDLER: A little late. Sorry about that, Your Honor.

THE COURT: Yes. Zero, zero, two-thirty. Okay, so why don't we get appearances as you speak because we have a lot of people appearing on the matter either here or on Zoom so please go ahead.

MR. FIEDLER: Okay, great. Ross Fiedler of Kirkland & Ellis on behalf of the debtors. I'm joined in the courtroom by my colleagues Ms. Geier and Ms. Acuna.

THE COURT: Okay, good morning. You want to go through the agenda?

MR. FIEDLER: Oh, yes.

THE COURT: Yes.

MR. FIEDLER: Thank you, Your Honor. Your Honor, before we go through the agenda, I'd just like to thank the Court for accommodating our schedule and adjourning the hearing to today. We really appreciate the flexibility. I would also like to thank the Court for, you know, entering some of the orders we've submitted on a consensual basis to avoid the need

for a hearing so I really appreciate that.

THE COURT: No problem. I consider it my job so I try to do my job correctly. That's it. Thank you.

MR. FIEDLER: Thank you. So turning to the revised agenda that we filed last night at Docket Number 717, you'll note we're only going forward today on the DIP motion on a final basis, the AlixPartners retention application and an assumption and assignment motion of certain leases to world market.

THE COURT: Right.

MR. FIEDLER: We did adjourn the final cash management order to the June 27th hearing and an assumption and assignment motion of certain leases to Burlington to the July omnibus hearing.

As you'll see reflected on the agenda, these matters are largely going forward consensually and uncontested and we'll get to some of the slim issues that remain, but we are going forward on a consensual DIP order other than one issue with the Texas Taxing Authorities and that's in large part to, you know, all the work that's been done by the advisors in this room and the advisors on the phone. So, the debtors are very grateful for all the work that's been done to get us to where we are today.

THE COURT: All right, so just for me to be clear on it, I did see the objections of the Texas Taxing Authorities in

Maricopa County and the latest redline that showed the changes that dealt specifically with Texas. But I didn't see something that dealt specifically with Maricopa but I understood what you were just saying is that you have actually resolved all those issues?

MR. FIEDLER: Well, we have -- we're actually not fully resolved on that language. We've been working in good faith over the past, you know, two weeks with them to get to a resolved language in the order, but we will address that when we go through the changes that are in the order.

THE COURT: Okay.

MR. FIEDLER: And I believe the entities that are referenced in the footnote account for Maricopa but to the extent they don't, we'll make sure that they're in there.

THE COURT: Okay.

MR. FIEDLER: So, Your Honor, turning to Agenda Item 1 which is a final DIP order, as Your Honor is aware, the interim order was entered at Docket Number 76 after the first day hearing and at the first day hearing we entered into the record the declarations of Holly Etlin and David Kurtz in support of the DIP motion at Docket Numbers 36 and 37. Last night, late last night we filed the revised form of order at Docket 716 which attaches the approved budget at Exhibit B. This morning though we filed a further revised order at Docket Number 718 and to the extent Your Honor doesn't have the

redline, I have a few extra here and I'm glad to --

THE COURT: I printed it out here. We don't have a color printer so it's really a blackline but that's -- I do have it.

MR. FIEDLER: All right, as long as you have it. So I know we got the order to you quite late so I'm happy to walk through the changes from the interim order to the proposed final order but as I said, that form of order reflects a consensual resolution between the UCC, the DIP lenders and the debtors.

THE COURT: And I will say I'm very appreciative of the efforts to get to that point and I know I'm sure it was not easy at all so I mean I think, you know, when you say walk through the changes, I get a number of the changes were reflecting that it's a final order temporally and all that so I would say using your, you know, discretion as to what is more kind of substantive --

MR. FIEDLER: Yeah.

THE COURT: -- amendments and how they might affect parties, particularly, you know, parties that still have objections outstanding.

MR. FIEDLER: Of course. I'll just hit the material changes.

THE COURT: And if someone thinks that you did not address a substantive change, they certainly have the

opportunity to be heard on it.

MR. FIEDLER: Certainly, Your Honor. So the first change is, and I'll just preview this, in Section G which are the debtors' stipulations, there's some revised language in here to reflect the transition of the agent role and to the pre-petition credit agreement from the revolving agent to Sixth Street which is the FILO agent and just to reflect that transition. I imagine Mr. Hillman for the DIP lenders may want to speak to that, but just previewing that change up front.

Turning to Paragraph 10 which deals with the reserves, as Your Honor will recall, as part of the interim DIP order we negotiated with the DIP lenders three reserves in an amount of $36 million. That was the priority claims reserve, the WARN reserve and the wind down reserve. In connection with the final DIP order, the DIP lenders have agreed that these reserves will be released and funded no later than ten days after entry of the final order. Previously it had been upon the expiration of the challenge period. And for that agreement to release the funds earlier than expected and all the other changes in the DIP order, the challenge period will expire upon either the earlier of the release of those funds or July 4th which was the previous date of the challenge period.

THE COURT: As to parties other than -- I understood the changes to indicate that the Committee challenge is resolved by the terms of the stipulation.

MR. FIEDLER: Correct. The Committee and all its members have waived its right to bring a challenge but that challenge period is applying to third parties who get requisite standing.

THE COURT: I'm sorry. I need to interrupt you one more time.

MR. FIEDLER: Yup.

THE COURT: When you referred to like Paragraph 10, if you could just give me the page number as well?

MR. FIEDLER: Certainly.

THE COURT: I have it.

MR. FIEDLER: Okay.

THE COURT: Page 42. But just going forward.

MR. FIEDLER: Okay. Yeah. But sticking with Paragraph 10, additionally, the DIP lenders have agreed that the priority claims reserve and the wind down reserve may be collapsed such that we have, you know, 16 million available to be distributed in accordance with the DIP order and so that provides more flexibility for the debtors to, you know, release the funds as they see fit in accordance with the order.

There's also an agreement that any excess funds in the WARN reserves to the extent all allowed WARN claims have been paid will be released to the debtors and unencumbered and to be used in accordance with the DIP order.

THE COURT: Okay.

MR. FIEDLER: The last point is there was a reduction in the priority claims reserve by $5 million. This was agreed to between the DIP lenders and the debtors simply to reflect an increase in the run rate of expenses to administer the cases and the anticipated sales in connection with the wind down.

Turning now to the crux of the order which is the negotiated settlement that was reached between the FILO, the UCC and the debtors, this begins at Paragraph 47 which, if just give me a moment, is Page -- this is Page 103 of the redline. So here in Paragraph 47 we've agreed to the inclusion of essentially a marshaling agreement. The concept here is the DIP lenders and the pre-petition secured lenders have agreed to look first to the DIP collateral and the pre-petition collateral as a source of recovery other than certain proceeds of certain specified claims and causes of action which are laid out in Paragraph 60.

And so Paragraph 60 is really the meat of the settlement between the DIP lenders, the UCC and the debtors and that begins on Page 115 of the redline. And so this deals with the application of proceeds of collateral as between the FILO and the estate for the benefit of the general unsecured creditor pool. So if Your Honor recalls at the interim hearing we made reference to, sorry, at the first day hearing we made reference to certain make-whole amounts that were payable under the pre-petition credit docs to the FILO lenders and that make-

whole served as, you know, the bedrock for the negotiated settlement between the UCC and the FILO lenders.

And so just to summarize the settlement at a high level, there are two constructs for the sharing of collateral proceeds as between the FILO and the estate and that is on Page 116. Basically, the first threshold which we call the initial sharing threshold there's not going to be any sharing of collateral proceeds as between the FILO and the general unsecured creditors until two things happen, first, the ABL obligations are paid off in full and, second, the FILO lenders must recover $515 million in cash plus interest on account of the FILO secured obligations and the DIP obligations and, you know, a portion of that goes to the make-whole amount I referenced earlier.

So, once those two conditions are met, then 100 percent of the proceeds of the collateral will go to the FILO except with respect to certain proceeds of claims and causes of action that are delineated in Paragraph 60. So, those include avoidance actions, shipping and price gouging claims and certain other litigation claims that I won't really get into. But I'll refer to those as the specified recovery baskets.

So, with respect to the proceeds of those baskets, there will be an allocation split between the FILO and the general unsecured creditors as to each basket. And so, for example, 100 percent of the proceeds of avoidance actions will

go to the estate for the benefit of the general unsecured creditors whereas, you know, 80 percent of the shipping and price gouging claims proceeds will go to the FILO with the 20 percent going to the estate for the benefit of the general unsecured creditors.

THE COURT: So, who would be bringing those claims?

MR. FIEDLER: So, those are all estate claims, and so those are claims that, you know, the debtors would bring, for example, against some of the shipping containers litigation that has been ongoing or, you know, avoidance actions and the like.

THE COURT: Right. I was thinking about the avoidance actions in particular. And I also saw there's a very quick timeline on getting a plan confirmed even. I guess I was just asking about in a way the timing and who was bringing all these kinds of claims which look like they might take some time to resolve.

MR. FIEDLER: Yeah, certainly. And I think we actually got a modest extension to the confirmation timeline. But during the cases those claims would obviously be brought by the debtors' estates and then will be determined in connection with any plan negotiation.

THE COURT: Well, it just seems like you guys have quite a bit on your plate and also on top of that bring litigation, you know, within the next couple of months, you

know, seems to make the plate, you know, even fuller or perhaps overflowing.

MR. FIEDLER: Understood. And, you know, these are what we see as valid claims and causes of action that will, you know, serve as a big recovery for the estate for the benefit of all creditors and so we are focused on pursuing those claims. So that's the initial sharing threshold.

For the second sharing threshold there are two conditions, once the debtors' estates have recovered at least 25 million of proceeds from those specified recovery baskets that I just mentioned and the FILO lenders have recovered $550 million on account of the DIP obligations and FILO secured obligations, then there will be a new sharing construct, basically, 80 percent of the DIP collateral and pre-petition collateral will be allocated to the FILO lenders with 20 percent being allocated to the estate for the benefit of the general unsecured creditors. There will also be new allocation split with respect to those specified recovery baskets that are more favorable to the estate than they were in the first initial sharing threshold.

THE COURT: So, when you use those two numbers, the 515 and the 550 million, it says plus interest and fees, so does that mean the 515 or 550 includes payments on account of principal, interest and fees or --

MR. FIEDLER: Yeah, that's right, Your Honor.

THE COURT: -- is that plus, after the 515 and the 550?

MR. FIEDLER: That's additional, on top of the principal amount which I believe was 475 and so plus the fees.

THE COURT: So, in other words, on the second threshold if there was -- I'm sorry.

MR. FIEDLER: So, it's actually 475 which is the initial principal amount, and then you have the new money advanced under the DIP which gets us to 515 plus additional interest and fees.

THE COURT: All right, but interest and fees are being paid on that currently?

MR. FIEDLER: I believe they are, yes, Your Honor.

THE COURT: So, I'm just trying to get a handle on what that plus is, is what I'm asking. Is that a big number or is that a --

MR. FIEDLER: I don't believe it's a big number, Your Honor. I think the intention of the settlement is the 515 which is the 475 --

THE COURT: Plus 40.

MR. FIEDLER: -- plus the principal and then a portion of the make-whole is settled as part of that.

THE COURT: Okay.

MR. FIEDLER: So, that's, you know, the crux of the settlement that was reached between the DIP lenders, the UCC

and the debtors. There are additional provisions, you know, the professionals for the Committee, the DIP lenders and the debtors will remain coordinated on, you know, the allocation of proceeds of the sales. And also, in exchange for these agreements, as you mentioned earlier, Your Honor, the Committee has agreed to waive the challenge period and has agreed that the debtors' stipulations are binding on the Committee and its members.

Additionally, as shown in Paragraphs 46 and 48 which is back on Page 101, I believe, yeah, the Committee and its members have, you know, consented to the standard provisions around 506(c) and 552. And so that's generally the settlement with the Committee and the FILO. There are additional changes to the order which reflect reservation of rights language that we agreed to with Chubb, Arch Insurance, American Greetings Corporation and Comenity Capital Bank which are highlighted in Paragraphs 63 through 66.

So, that's the balance. I mean, we do have outstanding, the Texas Taxing Authorities' objection. I understand Mr. Hillman may want to be heard in connection with some of the changes to the order so I'm happy to proceed however you'd like if you want to address the Taxing Authorities now or if you'd like to go through the changes with Mr. Hillman.

THE COURT: Will Mr. Hillman's changes relate to

Texas and Maricopa or other things?

MR. HILLMAN: I think we can isolate Texas for after. I'd just like to supplement the record of what you heard from debtors' counsel.

THE COURT: Okay, so then I think it makes sense for you to go now.

MR. HILLMAN: Perfect.

THE COURT: Okay.

MR. SHPEEN: Judge, may I be heard?

THE COURT: I'm not sure who that is.

MR. SHPEEN: Judge, it's Adam Shpeen of Davis Polk on behalf of JPMorgan. We also would like to speak with respect to the DIP order and happy to go after Mr. Hillman and before the Texas Taxing Authorities.

THE COURT: Right. Who do you represent, Mr. Shpeen?

MR. SHPEEN: JPMorgan Chase Bank, Your Honor in its capacity as the pre-petition administrative agent.

THE COURT: Okay.

MR. HILLMAN: Good morning, Your Honor.

THE COURT: So they've already made their presence known.

MR. HILLMAN: Great. Good morning, Your Honor.

THE COURT: Good morning.

MR. HILLMAN: For the record, David Hillman, Proskauer Rose. I'm here today on behalf of Sixth Street

Specialty Lending as the DIP agent and the FILO agent. It's a pleasure to be back before Your Honor.

THE COURT: Welcome.

MR. HILLMAN: So, I think you've made some comments from the bench recognizing that this wasn't easy. You're looking at a 109-page final DIP order which is the product of intense, hard-fought negotiations which reflect a balance, a compromise. We didn't get everything we wanted. What we wanted from the beginning, the FILO lenders, the DIP agent, was a DIP order that looked exactly like the interim DIP order. We didn't get that. The debtors didn't get everything they wanted and the Committee didn't get everything they wanted but together from the day the Creditors Committee was formed, we have engaged in on-going, constructive, at times tense negotiations and I think Your Honor has witnessed this from the sidelines because we kept on adjourning hearings. We weren't done.

And so I think what Mr. Fiedler did on behalf of the company to walk through this DIP order was an excellent roadmap, the top of the wave. But I think it's also important to recognize that the words on the page are what matter and not the descriptions of counsel in describing there because every word, every comma was carefully negotiated here.

So, why don't I start backwards on some of the issues that I think Your Honor had some questions about so that I can

clear up any misunderstandings? You asked about the Paragraph 60 and the economic sharing that the DIP lenders and FILO lenders have agreed to, with the company and its creditors to in effect share some collateral value before we are indefeasibly paid in full.

THE COURT: Right.

MR. HILLMAN: And you asked questions specifically about 515 and plus interest and fees and so 515 does represent, as you heard, 475 of principal pre-petition plus 40 million of the new money DIP. That's your 515. On top of that before there's any sharing are interest and fees and the interest and fees are set forth for the DIP in the DIP credit agreement and for the pre-petition there's a provision providing for the payment of continuing interest as adequate protection.

So, you asked a question what's the size of the number and is it being paid currently? It is being paid currently. There's no way I can possibly answer the quantum but it's a negotiated interest rate that hasn't changed from the pre-petition documents or from the DIP loan. Nothing has changed on the interest rate. There are a number of fees including legal fees. Those have been paid in due course. We followed the procedures that have been set forth in the DIP order for getting fees. So, yes, there's an additional quantum. It's unknown but it's being paid currently.

THE COURT: Well, that was really where I was headed.

I guess I had two questions, right, and I think you answered them both because the 515, right, when it says, and I'm in 60(b), so really, my questions were kind of two and maybe combined into one. Is it 515 in cash in respect of principal plus interest on such principal amount plus fees and, you know, I believe that every word was carefully negotiated and everyone thought about them completely and everyone is clear on what they mean as between the principal parties. But I guess as to me and maybe some other parties, when you say in respect of principal plus interest on such principal amount, arguably you could read that to say 515 includes interest as well as principal and fees or it could be the way I understood it was said, what it meant was that it's really 515 is principal and then plus on top of the 515, interest and fees. That's Number 1. Am I right?

MR. HILLMAN: This discussion has now made crystal clear that there is no longer an ambiguity because the record of today's hearing makes clear it is 515 million plus an incremental of interest to be determined plus an additional incremental amount of fees, also an amount to be determined. So the precise threshold sharing is 515 plus an indeterminate amount at this moment in time.

THE COURT: But which is currently accruing and being paid?

MR. HILLMAN: Correct.

THE COURT: And that was really the second -- I guess both of them are somewhat substantive but the second substantive part of it that I was asking about was I was just trying to see how in addition to being clear, how high of a threshold the debtor had to reach to get to these sharings. And I want to be sure everybody was on the same page.

MR. HILLMAN: Everyone is on the same page. It's akin to saying what's the payoff of the DIP. Well, it depends on the day you pay it off because interest will accrue and fees will accrue so we peg the number and there are incremental costs associated so I appreciate the opportunity to clarify any perceived ambiguity.

THE COURT: Great.

MR. HILLMAN: So, the other point worthy of a quick flyover which you heard from the debtor is this notion of some language as it relates to the successor agent being Sixth Street and the right to credit bid which is in Page 39. This one is pretty easy. There's carefully-negotiated language as between the FILO lenders who I represent and the ABL lenders who Mr. Shpeen represents who will presumably make some comments in a bit.

From our perspective there's been a positive development in the case in that the ABL lenders have for all intents and purposes been paid, right? Their debt has been satisfied. They have some contingent exposure on account of

LCs that's been cash collateralized and what the finance lawyers have is very specific definitions including discharge of revolving obligations.

And so I think there are some reservations of rights. Exactly what that means, for us it's pretty clear, they've been paid. We intend to become the agent for the facility. Mr. Shpeen will explain to the Court that JPM is in the process of resigning and I believe he's going to confirm that will happen this week. And we intend potentially to credit bid. There's a bid deadline on Friday. And we added some language in Paragraph 39 that talks about our ability to credit bid.

THE COURT: What page are you on? I'm sorry?

MR. HILLMAN: I have the redline. It's 91.

THE COURT: Yes, I'm on the redline also.

MR. HILLMAN: Yeah, 91. It's what I would describe as some inter-lender provisions in Paragraph 39. And so those reflect language that we've agreed to with the ABL lenders. I don't expect there to be any issues when you have for all intents and purposes a lender, admittedly a senior lender, right, we're the last lender, for all intents and purposes they've been paid off but there's ministerial plumbing that has to happen for someone to declare that that has actually happened. We believe that's happened and if for some reason down the road JPM or Davis Polk feels differently, they know where this court is, they know how to find you. There's just

some language in there that I wanted to highlight for Your Honor's attention.

You asked a question about plan confirmation. That has been accelerated and the goal is professional fees and the fees of administering the case are burdensome and wind up impairing the recovery of all stakeholders, so the company, the creditors, the DIP lender, the FILO lenders have all agreed let's move forward with all deliberate speed.

And, lastly, you asked about the claims and causes of action. The good news is we have reached this economic settlement on how to whack up, allocate, share the proceeds of I guess I would call them softer assets, these litigation-type claims. Those claims will proceed in due course. I don't think there's a time clock for someone to file an action by tomorrow or next week.

So, Your Honor was concerned about how many balls can this company actually juggle at one time because there are a number. I'm not aware of any impending statutes of limitations and I think we will all work collectively to figure out what's the best path to maximize the assets so that we can maximize the recovery for not only the FILO lenders and the DIP lenders but, I think from the Committee's perspective, for all stakeholders.

So, before I yield the podium, I want to make sure I'm responsive to any questions that you may have about the DIP

order or any things I've said today.

THE COURT: Well, that did respond to the questions and I guess I will note that I'm glad to hear that the ABL lenders have been substantially paid in full except for those other items that might remain and I'm glad that you're considering credit bidding.

MR. HILLMAN: Yes.

THE COURT: So, those are good things.

And then this is a question that I had from last time and it goes to the budget and I didn't ask this there but in the budget that was provided it says like about two-thirds or three-quarters of the way down after professional fees, DIP flows and other RX flows and we were going to determine what RX flows means.

MR. HILLMAN: Yes. The good news is I get to phone a friend here where I have Mr. Fiedler behind me who I think last time was able to phone a friend. I believe it was other restructuring costs and expenses that weren't precisely the debtors' professional fees. I think one of the items in there may be the claims and noticing agent. I'll defer to the debtor for anything else that may be within that line item.

But I can tell you that another reason why it took us time to get here is the budget is complicated. There are, you know, significant amounts at issue and from our perspective as a DIP lender we wanted to make sure we're not paying one penny

more than is necessary to get the job done and to monetize these assets.

So, from my perspective there's healthy checks and balances as to what's in here because the last thing we want to do as a DIP lender or as a pre-petition lender is see more money on the budget than is necessary. So, if that gives Your Honor some comfort, I can tell you that that process has taken place and that the budget does also represent a negotiated compromise.

THE COURT: You know, like you said, it ends up being a pretty big number. It looks like a $45 million number total on the budget. But the anticipation here under this budget, when would that first threshold be met? Do you have that or no?

MR. HILLMAN: That's a very important question. The short answer is no in part because there are variables we don't know yet. There are asset sales for which there will be competitive bidding and an auction so I don't think anybody wants to prejudge, especially on the public record what people, the company, the lenders, the Creditors Committee expect to be recovered and then to put that into a spreadsheet and say okay, look, by Week 17 here's what we expect. We would like everyone's expectations to be exceeded and I would hate to put a chill on market competition.

THE COURT: I understand that completely. I was just

asking was it anticipated within this budget period?

MR. HILLMAN: Oh. Well, I think the short answer to that is no because there are also I described them as soft assets, right, some litigation claims that will need to -- there is already pending litigation claims. I think you made reference to the price gouging complaint that's been filed. So it's going to take a consolidated, concerted effort from the professionals on this side of the courtroom to get every asset monetized and to keep paying down the senior most creditors first so there's wood to chop.

THE COURT: And maybe you got me thinking very positively with saying the ABL was pretty much paid in full.

MR. HILLMAN: Well, they're the first --

THE COURT: It's pretty early on.

MR. HILLMAN: They were the first ones to get paid so now we're into the FILO.

THE COURT: Okay.

MR. HILLMAN: I have no doubt that Mr. Shpeen will take issue with whether it's been, quote, paid in full. It's a defined term, capital letters, 15 paragraphs of what it means. I'm just trying to give you a sense that they've been paid. There's cash collateral backstopping their LCs. We're trying to do our best to make them as irrelevant as they could possibly be at this point in the case.

THE COURT: I thought I said, you know, substantially

--

MR. HILLMAN: Yes.

THE COURT: -- except for those things.

MR. HILLMAN: I heard that.

THE COURT: Okay, why don't we let Mr. Shpeen --

MR. HILLMAN: Thank you very much, Your Honor.

THE COURT: Thank you. Thank you, Mr. Herman (sic).

MR. SHPEEN: Thank you, Your Honor. May I be heard?

THE COURT: Yes. Of course.

MR. SHPEEN: Thank you. For the record, again, Adam Shpeen of Davis Polk & Wardwell on behalf of JPMorgan and Chase Bank as the pre-petition agent. I want to just say unequivocally at the outset we are supportive of the entry of the DIP order and we support the relief requested. And I agree with Mr. Hillman that this is sort of an easy issue in the grand scheme of things that we wanted to discuss with Your Honor very briefly. I think this can be brief.

Just by way of background to repeat what Mr. Hillman said, after entry of the interim order in April, as the company liquidated our collateral and sold its inventory and collected its pre-petition AR, our facility has been periodically repaid on a weekly basis and as of Friday, and we confirmed this just yesterday morning with JP Morgan's operations team, as of Friday the last payment we received, the entirety of the ABL loans have been repaid and all of the letters of credit

outstanding have now been fully cash collateralized. It took a little bit of time to confirm that because some of the letters of credit issued in CAD, Canadian dollars, but we now confirm that.

Under the credit agreement, as Mr. Hillman alluded to, once the discharge of revolving obligations has occurred, JP Morgan is obligated to resign as administrative agent and we intend to do that, Your Honor. The issue is the discharge of revolving obligations has three components. It includes the discharge of the loans which have been repaid, the cash collateralization of the LCs which has occurred and then the last component is to confirm that all other obligations have been satisfied in a manner satisfactory to us and that includes banking service obligations.

JP Morgan serves as the treasury service and manager for the company, so we do intraday wires and sweeps for the company and sometimes that can result in overdraft obligations and cash management obligations being outstanding. There's also professional fee obligations. So, you know, in fact, we just got off a call with JP Morgan about an hour ago and we are hard at work confirming that all of these remaining obligations, the third bucket of obligations are going to be satisfied in very short order. Normally, when you do these agent transitions, it takes sometimes weeks but we're working at warp speed to accommodate Sixth Street and so we're hopeful

that we can get out of the picture and resign, you know, by the end of the week.

So, I've agreed ahead of this hearing to state on the record. I'll just read this for Your Honor's benefit. On behalf of JP Morgan we can confirm that JP Morgan will use commercially-reasonable efforts to confirm that the discharge of revolving obligations has occurred and resign as agent prior to the end of the week which we hope to do and then be out of the picture.

Just one wrinkle, Your Honor, and this is a bit of a late breaking development. It occurred after the DIP order was filed and arises out of our conversation with JP Morgan this morning. The letters of credit, as I said, have now been fully cash collateralized and some of the letters of credit are long dated and it may be the case that in the future they're drawn and the letter of credit issuer has a reimbursement -- there's a reimbursement obligation out of the LC cash collateral account to that letter of credit issue. The letter of credit issue is JP Morgan. So, what we'd like to do is remain as agent under the facility solely for the purposes of administering that LC cash collateral account.

I'm told that Sixth Street is okay with this. Also I understand -- I received an e-mail not long ago from Ms. Geier that Kirkland is okay with this, so if Your Honor would allow me, I would like to just read into the record language that I

think will appear in a future iteration of the DIP order once it's submitted to Your Honor.

THE COURT: Well, has this language been seen by the other parties or is it just coming out?

MR. SHPEEN: Your Honor, apologies if I misspoke. It has been seen by Proskauer and they've confirmed that they're okay with it. It's been seen by Kirkland & Ellis. And so for the benefit of all parties-in-interest I wanted to read it into the record just to confirm no issues.

THE COURT: Okay, does anyone have any objection to that?

(No audible response)

THE COURT: No objection so go ahead, please.

MR. SHPEEN: Sure. So, it begins, Your Honor, notwithstanding anything herein or in the pre-petition credit documents, Clause X, JP Morgan Chase Bank N.A. shall remain as agent under the pre-petition credit agreement solely with respect to the administration of all accounts holding cash collateral that cash collateralizes outstanding letters of credit issued under the pre-petition credit agreement and Clause Y, nothing herein shall release any liens granted under or in connection with the pre-petition creditor.

So, again, Your Honor, that just confirms that we'll stay as agent solely for the purpose of drawing money out of the cash collateral account if and when LC are drawn in the

ordinary course. And that's it, Your Honor.

THE COURT: Mr. Hillman is rising. He's coming to the podium.

MR. HILLMAN: Yes. Thank you, Your Honor. David Hillman, Proskauer. I was aware of the reservation or the statement that Mr. Shpeen would make on the record. At the end of the day you heard everything that we've heard. We're planning on credit bidding on Friday. They've been paid in full. We're not planning on going through the agent, the ABL agent, for us to do what we need to do to protect and preserve the value of the assets and if there's an issue that we have to deal with later in life, we'll deal with it, but I think we should put a fork in this issue and now move on.

THE COURT: The fork would be, in other words, to just leave it. Mr. Shpeen, read what he read and you're, you know --

MR. HILLMAN: Thank you.

THE COURT: -- may or may not be okay with it, but you're going to deal with it and it'll get resolved just like these other things have gotten resolved.

MR. HILLMAN: I have nothing further.

THE COURT: All right, Mr. Shpeen, did you hear that?

MR. SHPEEN: Yeah. I just want to confirm because this is an important point for JP Morgan. There's, you know, almost $100 million in an LC cash collateral account. We just

want to make sure over time that's administered properly.

So, to be clear, we have no issues with whatever rights Sixth Street has to credit bid. We don't want to interfere with those rights. They have whatever rights they have and they'll likely credit bid. But I just want to confirm that it is our understanding that Sixth Street is supportive of JP Morgan remaining as agent solely for the purposes of the LC. I don't think that was a dispute. I just want to confirm that Mr. Hillman agrees.

MR. HILLMAN: David Hillman, Proskauer Rose, DIP lender, FILO agent. I confirm.

THE COURT: He confirmed it.

MR. SHPEEN: Okay, thank you, Your Honor. That's all for me.

THE COURT: All right. Yes, sir. Please just state your name and who you represent for the record.

MR. FEINSTEIN: Certainly, Your Honor. Robert Feinstein, Pachulski Stang Ziehl & Jones. We are proposed counsel for the Official Creditors Committee. I'm joined by my partners, Brad Sandler and Paul Labov here in the courtroom.

So, Your Honor, first of all, it's a pleasure to appear in front of you and I do want to provide some perspective of the Committee on the landscape as when the Committee was formed and the settlement that was reached and the rationale behind it.

As I know on May 31st, Mr. Sandler announced that the Committee had reached an agreement in principal with the lenders but didn't disclose it because there was still wood to chop to document that, to get the debtor on board so there really hasn't been visibility until the filing of the order on a number of the points of resolution that Mr. Fiedler described and Mr. Hillman described. But I do want to provide for the Court and to unsecured creditors who are listening the work done by the Committee and perspective of the Committee.

So, with that, Your Honor, I just, you know, will note that the case was filed on April 23rd. There was a first day hearing on April 24th and the Committee was not appointed until May 5th and then we were hired as proposed counsel to the Committee on May 8th which is just a little over a month ago.

So, while Mr. Sandler and I listened to the first day hearing, we obviously couldn't appear and be heard so the parties before the Court at the first day were essentially the debtor, the secured lenders and the U.S. Trustee. So, things happened on the first day that affected the Committee's role in the case, ability to negotiate in the case and specifically, Your Honor, Your Honor granted a roll-up of $200 million of debt at the first day hearing and that included two make-whole claims that are within the secured debt of the FILO lenders.

These were controversial from the Committee's perspective because the roll-up in particular took a pre-

petition debt claim of 200 million that only had recourse to certain designated items of collateral, made it a post-petition super priority claim but more importantly, granted a blanket lien on all the unencumbered assets for the benefit of the secured lender and that was something the Committee once it was formed was very concerned about because those unencumbered assets, in our view, should have been made available to pay general unsecured creditors and the estate and not given to the secured lender who was already getting fees and the like for the loan.

The five-to-one roll-up, again, basically granted them a $200 million lien on unencumbered assets. And, you know, part of the Committee's immediate investigation was are there unencumbered assets and you can see listed in the sharing paragraphs, in Paragraph 60 the categories of what we believe are valuable litigation claims that the lenders did not have a lien on pre-petition. Basically, you know, the UCC provides that if you are a lender and you want to get a lien on a cause of action, it has to be specifically described in the UCC filing and here, we did our investigation, there were no references to any litigation claims.

So, you know, before the petition date there were, in our view, very valuable causes of action out there that didn't belong to the lenders. So, when the lenders were granted a lien on those on the first day, we had two choices which was

either to litigate that or to settle it. Litigating it would have involved conceivably moving for reconsideration of the interim order. We couldn't appeal it because there was an interlocutory order. We could appeal the final order if it was unchanged.

But we did much better which is that we engaged immediately in negotiations with the secured lenders to basically call back the roll-up, the blanket lien on the rolled up debt because now you can see that once the principal is recovered, and that's the 515 million -- that's 475 million of pre-petition debt, 40 million of new funds, everything above that from 510 to I believe it's 585 million is make-whole claims and the like that are treated differently than principal under our settlement.

So, basically, unless and until the lenders get to 515 million, they're going to recover out of their hard collateral. But once they hit 515 plus the interest on the 515, then you see that the sharing formula kicks in. And so from 515 to 550 there's a certain set of formulas and then after that, the formula changes so you can see that the secured lenders have made concessions to allow significant portions of the recoveries from those formerly unencumbered assets to be received by the estate for distribution to general creditors.

And it was very concerning to us that, you know, on the first day of the case, Your Honor, because there was no

representative of unsecured creditors, didn't have the benefit of a full record, an evidentiary record and this is why we thought the first day roll-up was very controversial in that really, nobody had the wherewithal, the ability to articulate to the Court that there are significant unencumbered assets that were being liened up that day without notice to, you know, most of the parties in the case.

So, fortunately, we were able to fix that. And, you know, we worked intensively to try to basically dig ourselves out of a hole where, you know, all the assets were liened on the first day and we got to the resolution that we did and that took a tremendous amount of hard work and negotiation with our counter parties. We're very pleased that we got there.

And I won't repeat Mr. Fiedler's accurate recitation of the settlement. I do want to highlight a couple of things and that is, you know, aside from the make-whole of the roll-up, another big issue for the Committee was the surcharge waiver and we wanted to be sure before agreeing to a surcharge waiver that the budget, the DIP budget was robust and we wanted to be sure that all expected administrative expenses in the case were going to be paid because if there were any administrative expenses that were not included in the budget and the lender got a surcharge waiver, then basically, the rest of the unsecured creditors would have to bear those costs and that didn't seem appropriate.

So, we did a larger settlement than typically you see in a DIP order in that we waived our challenge period in exchange for these concessions to share in the proceeds of these previously unencumbered assets. We also dealt I think in an appropriate way with the make-whole claims which we had potential challenges to. You can see that those claims are only going to be paid once we're in a sharing mode once the 515 is recovered.

So, a couple of other small points. Somebody said before the words of the order matter. The Committee has waived the challenge period. The Committee is supportive of the surcharge waiver. Not its members. We don't represent the members so we really can't speak for them and the order talks about the Committee and not members because we can't bind them. I don't expect, you know, that the Committee is going to come out of left field because the Committee was kept fully apprised. And to be clear, it's a seven-person committee. It includes vendors, landlords and importantly, the indentured trustee for the unsecured notes. So, all those parties were intimately involved in our analysis, in our negotiations and kept fully apprised.

So, the benefits of the settlement should be clear, Your Honor. But to be clear, we are eliminating a lot of the friction costs in the case. We didn't have a big contested DIP hearing. We agreed beyond the typical DIP issues to share in

these recoveries from the various litigation claims. To address Your Honor's point before, there's no intention to start and finish these litigations before confirmation. The best we can do is investigate them. We could start litigation. But the litigation is going to have to be pursued post-confirmation by a liquidation trust or the estate or what have you, but we do think there are valuable claims out there and a number of varieties of them.

So, you know, while we're then getting to share in these assets, we're also cutting down on the administrative costs of the estate because there's not going to be any fighting. So, you know, this will maximize the recoveries by the estate and will eliminate the burden, if you will. Our next step after entry of the order if Your Honor enters it today will be to turn to working on a plan. We've had some preliminary discussions with the lenders and with the debtors. We still have some wood to chop. But we think it would be in everybody's best interest to get a consensual plan on file as quickly as possible, move to confirmation and then, again, cut down further on the administrative expense of secured lenders' counsel, the Committee counsel, debtors' counsel and just have one entity, whether it's a trust or the estate, pursue these claims for the benefit of the remaining creditors.

So, it's a lot that we've accomplished in four weeks but the Committee is very pleased with the outcome and supports

entry of the order. I'm happy to answer any questions Your Honor may have.

THE COURT: No, no. I just want to repeat that I'm very appreciative of the efforts and how much hard work had to go into it and the issues that you raise are certainly important and significant ones and I think that as is almost always the case, a negotiated resolution is better than litigation in a lot of ways and, you know, there are some exceptions to that rule but I think in this particular case with the expedited time frame and, you know, the situation where it was, it was really important to get things moving quickly and get the going out of business sales and administration funded which is what you did and then the Committee did its job. I think it's a prime example of the process working and I appreciate it.

MR. FEINSTEIN: Thank you, Your Honor. Thanks very much.

MR. STOLZ: Your Honor, may I be heard?

THE COURT: Yes.

MR. STOLZ: Good afternoon, Your Honor. Daniel Stolz, Genova Burns, co-counsel to the Ad Hoc Committee and bond holders. I'd like to introduce Your Honor to Andrew Glenn, my co-counsel, who wants to say some words on behalf of our clients.

THE COURT: Okay, sure.

MR. GLENN: Thank you, Your Honor. Andrew Glenn, Glenn Agre Bergman & Fuentes, on behalf of the Unsecured Bond Committee, Ad Hoc Bond Committee. Your Honor, that's all our 2019. We have around 150 million bonds in our group. That number is growing. We are in touch with many other holders. The bonds in this case are widely held by retail holders which is somewhat unusual. We filed a reservation of rights with the Court earlier this week. We have reached out to the Creditors Committee to try to get involved in the negotiations and discussions about this resolution particularly after it was announced at the last hearing that the Committee had reached a, quote unquote, case settlement.

Now, we're appreciative of the Committee doing its job. We understand it has a job to do. But that does not excuse us from being excluded from the process. The bonds in this case in toto are a billion dollars for the largest economic stakeholder and so, you know, we got the settlement last night when we asked Mr. Sussberg and Kirkland and they graciously provided it as soon as available. The Committee has not communicated with us at all beyond one phone call where they refused to include us in the settlement, give us any details about the settlement, so we heard about it just last night.

The provision that's most concerning to us at this point is Paragraph 60. Paragraph 60 provides that the

challenge period is now cut off for everybody on the earlier, I believe, of ten days after Your Honor enters the order or I believe the prior challenge cut off date of around July 4th. The settlement that Your Honor is being asked to approve in the DIP order may be perfectly fine. It may be a fair and reasonable settlement. But beyond the podium presentation by my colleague we don't really have any details about why this is a good deal for the estate.

So, what I would respectfully request, Your Honor, is that parties-in-interest be given 30 days to review the settlement to have a new challenge period set and I think the reasoning for that is as follows. Okay, first, if this were a 9019 settlement, you couldn't do it on that kind of notice. It would be a longer notice period traditionally. Number 2 and what's concerning to me is that the Committee has an obligation, a covenant in this DIP order to oppose anyone else from challenging the settlement or challenging the liens and claims. So, we're kind of boxed out.

If the Committee would come meet with us and talk to us about their share, their reasoning and more of their work product, maybe we could get comfortable very quickly with this, maybe not, I don't know. But if parties-in-interest need to review the settlement on their own and replicate some of the Committee's work, unfortunately, then I don't think it's fair as a matter of due process for the Court to approve that today

if the period is going to be ten days. That's a practical impossibility for anybody to do anything. The Committee has been at this for the better part of, I believe, you know, 45 days or so. Ten days is just not enough. So, you know, we're not here to get in the way of the company having access to its DIP. That's fine.

Challenge periods in these cases are routinely extended by Courts for cause shown and here I think it's really a matter of due process for parties-in-interest to have a realistic, meaningful opportunity to examine the fairness of the settlement because we agree that the litigation in this case is the most valuable asset of this estate from the perspective of the general unsecured creditors and here we have an announcement, you know, the night before the hearing of most of what that settlement is going to be and the practical reality is we are sharing a lot of that settlement with the lenders who got a very, very rich roll-up at the beginning of the case. So, that's my request, Your Honor. I'm happy to answer any questions.

THE COURT: Well, I guess I'd like to hear from the other parties as to the debtors' and the Committee's and the lenders' position on that request.

MR. FEINSTEIN: Thank you, Your Honor. Let me begin. Robert Feinstein, Pachulski Stang, for the Committee. A couple of important facts, Your Honor. The indentured trustee for the

notes that are held by Mr. Glenn's group is on the Committee and was privy to all of the analysis of unencumbered assets, the negotiations back and forth throughout the process. The Committee represents in total almost I think a billion five of liabilities and one billion of that is the indentured trustee for these notes so they were fully apprised.

Mr. Glenn did approach us at a time when we were still negotiating. It was just inappropriate to disclose to him the status of privileged negotiations between us and the lenders and the debtor. And, importantly, you know, Mr. Glenn's group are not restricted so far as I know. The Committee has confidentiality obligation. We have a fiduciary obligation to all the creditors including Mr. Glenn's group which we think we fulfilled. And Mr. Glenn does not have a fiduciary duty. I mean he has his own group of note holders that hold maybe it's ten percent of the notes or so forth.

So, the way the system works is that the Committees are given confidential information and have a fiduciary duty to represent all the creditors. Again, with the indentured trustee on board with the settlement, we think we fully fulfilled that obligation. There are dates and deadlines to get a final DIP order entered. I think that deadline will be blown if we defer entry of this order for a month while Mr. Glenn --

THE COURT: I don't think that's what he was saying.

I think he was saying he just wants an extension of the deadline to challenge. Maybe I'm wrong.

MR. FEINSTEIN: I'm not sure. If it's the extension of the challenge period, I'll leave that up to Mr. Hillman to address. If it's deferring entry of this order, we think that would poorly serve the interest of the unsecured creditors.

MR. GLENN: To be clear, Judge, it's only the challenge period, that's it.

MR. FEINSTEIN: Then I'm going to leave that to Mr. Hillman. I will address this one point which is we did agree with the lenders to oppose other people seeking to bring a challenge because we fully vetted this and we compromised our challenges in exchange for very valuable consideration, sharing the very same assets Mr. Glenn was concerned about being liened on.

THE COURT: But, Mr. Feinstein, now that it's clear that he's just asking for an extension of the challenge period --

MR. FEINSTEIN: I'm going to sit down.

THE COURT: -- are you saying the Committee has no position on that or --

MR. FEINSTEIN: That's up to Mr. Hillman. The secured lenders are the beneficiaries of the challenge period. It's not my place to grant an extension. That's between Mr. Glenn and Mr. Hillman so I'm going to sit down.

THE COURT: All right.

MR. HILLMAN: For the record, David Hillman, Proskauer Rose, counsel to Sixth Street as DIP agent and FILO agent. This is the first time I've heard a request for an extension of the challenge period. I saw there was a reservation of rights filed. So I'll start with the headline and then work backwards.

Under no circumstances would we agree to a further extension of the challenge period. It is part of the negotiated bargain that was struck. That's the headline.

THE COURT: Can we just go through it and just tell me where -- because it sounded like there was a couple of dates that were said and --

MR. HILLMAN: I want to walk Your Honor through all of that and you heard briefly from Mr. Fiedler on this so -- are you in the redline?

THE COURT: I'm in the redline, yes.

MR. HILLMAN: Give me a second. Let me just flip to the redline. If you allow me to just introduce one defined term which will then help us with the challenge period --

THE COURT: All right.

MR. HILLMAN: -- I think that will be an easier way to do it. I believe it's Paragraph 10. I'm just getting there myself, Paragraph 10. It starts on 39 of the redline. I'm now in the redline at Page 42 so it's 10(c). Let me know when

you're at 10(c), Page 42.

THE COURT: I'm there.

MR. HILLMAN: Okay. So, ten calendar days after entry of this final order defined term the reserve release date all funds in the priority claim reserve and the wind down reserve shall be released to the debtors free and clear of the DIP lines, pre-petition liens and adequate protection liens. And then it goes on to say that the liens are collapsed such that the 15 million can be used by the debtors without regard to allocation as set forth in 10(b).

I know we're building to the challenge period but this is an important predicate. We were not prepared to release the funds in this provision and the debtors' and the Creditors Committee were advocating for a release of these funds. You may recall I stood before you at the first day hearing and we talked about the funds that we were setting aside in these reserves and they were always subject to, and I'm trying to find the language here, it's all struck. If you look at Page 40, 41, you could see a lot of redlining there which was 10(c) and 10(d) and 10(e).

Rather than read you the redline, I'll tell you in substance what it said. If a party obtained standing and brought a challenge, we would revoke the funds in these reserves. We weren't going to give these funds and release them from our liens until we knew we were free and clear of a

challenge. The Committee insisted that we yield on this point in order for us to get to a deal.

As you can imagine from the position of the DIP lender and pre-petition lender, imagine we give, whether it was 36 million or $16 million and then it turns out we are embroiled in litigation. So, we were prepared to give on this important negotiated compromise with a caveat and that's the definition of reserve release date, that we'll wait ten days.

So, now if you go to the challenge period which I believe is Paragraph 43 on the redline, it starts at Page 95 -- let me know when you're there, 43.

THE COURT: 95.

MR. HILLMAN: Yup. And so you can see the change to the timing of the challenge period which appears on Page -- it's a carryover, 95 to 96, the challenge period by no later than, it says the earlier of the reserve release date, so roughly ten days from today, June 25th, or July 4th which was the original, you know, I guess it was 75 days from the filing of the case. That's not a new date. That's just hardwiring what the original order said.

So, the request from the lenders was to shorten the challenge period by ten days in exchange for something meaningful to the Creditors Committee and to the estate freeing these reserves. It is unfair to isolate one quid pro quo within a larger bargain but those were the two inextricably

tied together.

So, if there were any extension, we would say -- I'm not authorized to say this but I would certainly recommend that we're not going to release funds until that challenge period expired. If I said that, that's going to pull one thread that's going to cause, I think, I don't want to prejudge things, this carefully-negotiated settlement to collapse.

I also want to point out a couple of other pieces to give Your Honor some, again, big picture perspective. The day the Creditors Committee was formed --

Can you help me out? When were you formed?

MR. FEINSTEIN: May 5th.

MR. HILLMAN: May 5th, either May 5th or May 6th we provided -- actually, it may have come from my colleagues at Davis Polk, a care package with all of the claims, all of the credit agreements and a detailed perfection memo, not just dropping UCCs, but a memo that was prepared to enable the reader to understand very specifically how and to what extent we were fully perfected on all of those assets so we gave them that care package.

And so there's ten days left on the clock. No one has asked us for any of our perfection documents. We've given it to the estate fiduciary. And I think when you think about fundamental fairness, I think it's important to take into consideration as an important factor what you heard from Mr.

Feinstein and that is the indentured trustee is on the Committee. So, estate fiduciaries charged not with looking out for their own pecuniary interest both on the debtors' side and on the Committee's side have determined the deal is in the best interest of creditors and a small group of interested stakeholders seek something that will upset that carefully-calibrated compromise.

THE COURT: Small?

MR. HILLMAN: Small relative to the size of the Committee and creditors at large, so it's a relative term.

THE COURT: Is it small in comparison to creditors at large?

MR. HILLMAN: I was referring to -- I think I heard --

THE COURT: Small in how many there are maybe but I mean --

MR. HILLMAN: I only meant --

THE COURT: -- the number is huge.

MR. HILLMAN: I only meant relative to the entire unsecured creditor class represented by the Committee as a court-appointed fiduciary. I was making a comparison of an Ad Hoc group and its members relative to the size of an estate fiduciary. I'm sorry if I used a term that brought us down a detour.

THE COURT: No need to be sorry. I was just trying

to understand what you were saying --

MR. HILLMAN: Yeah.

THE COURT: -- because I didn't --

MR. HILLMAN: Relative size.

THE COURT: I have a hard time with a billion being small.

MR. HILLMAN: No. Relative size.

THE COURT: I'm a public servant.

MR. HILLMAN: I'm a kid from Queens. I can relate, trust me. What I meant was relative size to the Committee.

THE COURT: All right.

MR. SHPEEN: Your Honor, may I be heard briefly?

THE COURT: Wait a minute. I'm sorry, that was Mr. Shpeen again. Go ahead.

MR. SHPEEN: Yeah. Your Honor, very briefly. Adam Shpeen again of Davis Polk & Wardwell on behalf of JP Morgan Chase. We are pre-petition secured creditors so we do have an interest in this dispute.

Just to be clear, Your Honor, I'm scratching my head hearing Mr. Glenn speak because fundamentally, what he's talking about is prosecuting estate causes of action, not bond holder causes of action -- estate causes of action, and the estate who is the holder of these causes of action has made a business judgment to settle them in connection with this DIP order and the only other fiduciary in these estates, the UCC

has signed off on that settlement. They're the only other potentially appropriate plaintiff in this action and they've agreed to settle. The bond holders cannot be plaintiffs here.

And so, I'm confused as to why this is being raised at all. The bond holders have had almost two months to approach us and to approach Sixth Street if they wanted more information. They have not done so. The challenge period here is appropriate. It's customary. And from our perspective there should and can be no changes just in light of the circumstances and a settlement in this DIP order. Thank you, Your Honor.

THE COURT: Well then what was the purpose of giving in the challenge period parties other than the Committee the ability to potentially make a challenge? Doesn't it apply to other parties-in-interest?

MR. SHPEEN: Certainly, Your Honor. They have two months to come to us, ask questions, we can provide information. Just as we did when the Committee was empaneled, we provided, as Mr. Hillman said, a care package of all the perfection documents we had at our fingertips and provided that immediately. They can raise a challenge, file a standing motion, but there has to be finality and that's why the challenge period has an expiration date. It's appropriate. it's been two months.

Given the pace of these cases and the likelihood that

we could be, you know, at a confirmation stage in very short order, there's just no reason to have more delay here. And so we support the estate fiduciaries, the debtors, the UCC -- we defer to their business judgment and it's just a surprise to us that this is coming out of the blue at this hour.

THE COURT: Okay. Thank you.

UNIDENTIFIED ATTORNEY: Your Honor --

MR. BAUCHNER: Your Honor, if we're moving on to the next matter, I'd ask to be heard on behalf of the Texas Taxing Authorities.

THE COURT: Wait -- I don't know who's speaking now but --

MR. BAUCHNER: This is Joshua Bauchner of Ansell, Grimm and Aaron, Your Honor. I'm not sure if we're advancing on to the next issue or if we're still addressing the bond holder's concern.

THE COURT: We're still addressing the bond holder matter, so, sorry about that.

MR. BOCK: Thank you.

MR. FIEDLER: Your Honor, for the record, Ross Fiedler of Kirkland and Ellis on behalf of the debtors. I just want to echo the same comments that Mr. Shpeen and Mr. Hillman made which is this is a good deal for the debtors and the negotiation point that the DIP lenders will release and fund these critical reserves no later than ten days after the entry

of the order, was a heavily negotiated point. And to stip out one point from the overall settlement is just not appropriate.

I will say the challenge period hasn't expired. There's ten days from when these reserves are funded for the bond holders to file their standing motion. And that's a lifetime in the restructuring community so they have that right.

Also, it's quite of an expensive proposition to extend the challenge period. You know, there is a provision in the DIP order which says, you know, the ABL indemnity reserve will be increased to $5 million if there's a valid challenge filed. And so that is, obviously, something the estate wants to avoid but, you know, at the same time, the bond holders have their rights for the next ten days to bring a challenge if that's in their interest to do so.

THE COURT: Well, what if I consider an extension? I'm not saying I'm granting an extension. What if they're tied into, you know, that point in 10(c) and that the reserve release date is moved to the extended, if any, challenge period?

MR. FIEDLER: Well, the issue is, this was a heavy negotiated point and those funds that are going to be put in the reserves are critical for the debtors' estates and it was --

THE COURT: But they're already in the reserves,

right?

MR. FIEDLER: Say that again, Your Honor?

THE COURT: They're not already in a reserve?

MR. FIEDLER: Well, they'll be released from the reserve by the DIP lenders upon the order, the final order being entered in no later than ten days after the order's entered.

THE COURT: But the funds in the reserve could be used, right, or no -- they couldn't be used until the release datge?

MR. FIEDLER: That's correct.

THE COURT: Okay. Your colleague was --

MS. GEIER: No, good afternoon, Your Honor. Emily Geier from Kirkland and Ellis on behalf of the debtors. I just wanted to remind and sort of bring attention to the Court from where we were at the first day hearing to where we are today with this agreement. The original provision required that only upon no challenge being filed would those reserves actually be released to the debtors and that is the critical funding to ensure that we can reach a plan confirmation process.

So, we are still in that same position except, you know, the UCC pushed for this point as well these critical reserves being released to the debtor so that we have those funds and they are not wrapped up in that process is absolutely essential to pushing forward on these cases. And, frankly, I

don't know what happens to the rest of the settlement when this provision changes.

At the end of the day, Your Honor, of course, you will do what you think you must do. I think we would have to go back -- I'm assuming that we'd have to go back, you know, and discuss and sort of figure out the path for it because it is such an important part to have that -- those funds reserved and released. Those funds are, you know, just to remind Your Honor, those are at this point $31 million of important funding for employees, priority and administrative claims and to fund the wind down of the estates.

THE COURT: Right. Right.

MS. GEIER: And maybe --

THE COURT: It's not being released anyway for ten days under the settlement, right? So --

MS. GEIER: You are correct, Your Honor. We will not be utilizing those funds necessarily during that time period -- or we certainly won't be using them for the next ten days. And I will say we will be working with the ad hoc group to answer all their questions. I think all of us will be working with them to share information and get their support of this settlement. I think it is a very good deal and I think they'll come to see that. And you heard from counsel. He doesn't necessarily opposed it. He just hasn't had a chance to review and we have ten days here to use to see if there actually is an

issue at all.

THE COURT: Okay. Thank you.

Mr. Herman's coming back.

MR. HILLMAN: Yeah, David Hillman for the record.

THE COURT: And then Mr. Glen wants to speak so, why don't we just --

MR. HILLMAN: Sure, I just want to be clear a fine point on a change that we walked through on Page 10.

THE COURT: On page?

MR. HILLMAN: Sorry, Page 40, Paragraph 10. The current deal, you're right, Your Honor. Ten days passes regardless of what happens, the reserves are released. That's the current deal. The prior deal, which is reflected in red line says the funds are forfeited, they come back to the DIP lender, if there is a challenge. That's not part of this deal.

So, what the Creditor's Committee and company negotiated for is an assurance that on the tenth day, if Your Honor approves this order, on the tenth day after that moment, these reserves get released from our liens, as it says in this paragraph.

THE COURT: Even if a challenge is filed.

MR. HILLMAN: That's what this document says, Your Honor, correct.

THE COURT: Even if a challenge is filed.

MR. HILLMAN: Correct. The prior deal, the interim

order --

THE COURT: I understand.

MR. HILLMAN: -- did not say that and I think that is a very important give that I wanted to highlight. Thank you.

THE COURT: All right.

MR. SHPEEN: Your Honor, may I just make one quick point, Your Honor? It's Adam Shpeen from Davis Polk.

THE COURT: Okay.

MR. SHPEEN: Your Honor, just very briefly, I just want to emphasize that the challenge period in the final DIP order is no different than the challenge period that was approved in the interim order. We're not shortening the challenge period. The July 4th is the 60 day period that was agreed to previously. Now that we have a settlement --

THE COURT: It was 75, though. It was 75, sir.

MR. SHPEEN: It was 75?

THE COURT: Yes. So it is shorter.

MR. SHPEEN: Well --

THE COURT: That's what Mr. Herman (sic) just told me, I though.

MR. HILLMAN: David Hillman, for the record. Just so we can avoid any ambiguity, Paragraph 43 includes the challenge period. Paragraph 43 is on Page -- starts on Page 95. It says no later than the reserve release date, which is ten days from today, effectively, June 25th or July 4th. The July 4th date

was always the same outside date. We just took words and converted it into a date certain.

Do you have any questions about that, Your Honor?

MR. SHPEEN: That's the point I was making, Your Honor. July 4th is the same as the 60 days after date that was in the interim order.

THE COURT: So --

MR. SHPEEN: And so, it --

THE COURT: Wait a minute. Just let me catch up with you, okay? By no later than 60 days following the date of formation of the Committee which was May 5th as I understand it. And that would take it --

MR. SHPEEN: July 4th.

THE COURT: To July 4th. Or 75 days following the entry of the interim order if no Committee is appointed.

MR. HILLMAN: That clause is superfluous because a committee was appointed.

MR. SHPEEN: Exactly.

THE COURT: Okay.

MR. SHPEEN: Exactly.

THE COURT: I got it.

MR. SHPEEN: So, my point, Your Honor, is that we're not shortening the period at all and if there were no settlement before Your Honor and Mr. Glenn stood up and asked for an extension, he's articulated no cause for the extension.

And this was the period that was approved at the interim order phase. And he's had two months to do his work. And to come at the last minute to ask for an extension without cause is mystifying. But now there's certainly no cause because we have two estate fiduciaries saying that they've done the work and there's no challenge that's viable and so they've decided t settle the actions on behalf of the estate.

So, that's the only point I wanted to make, Your Honor. And with that, I'll go on mute.

THE COURT: Okay. Mr. Glenn?

MR. GLENN: Thank you, Your Honor. Just a couple clarifying points. We signed an NDA with the debtor, I believe, a couple of weeks ago. We asked for information regarding the lenders and challenge issues and we were told that we were not going to get that. We have tried to communicate with our indentured trustee on the Committee. The indentured trustee has been completely unresponsive.

But I want to make something very clear, okay? Ms. Geier is correct, it could be very well that we think this is a great settlement. We don't know because we don't have the information and what we're now being told is, yes, you had until July 4th, but now it's ten days. There's been no proffer about when the company actually needs the money to pay the bills from that reserve. So, we don't know if the company is going to suffer any prejudice if the reserves can't be released

until the challenge period actually ends.

And, look, I understand people have their fiduciary duties but they have fiduciary duties to the stakeholders And the people with the money on the line deserve (a) due process. The Bankruptcy Code provides that we are a party in interest. And we were told you can't get the information. You can't participate in the settlements and now the Committee has an obligation to block us from trying to do the right thing if we determine -- not because we're going to bring direct claims, that someone would have to bring estate claims.

I understand it's an unusual construct and I hope we don't have to do it. But at the end of the day, the bond holders have a billion dollars on the line here. We have a plan settlement, okay, with the most valuable asset here. (a) we deserve an explanation, (b) we deserve due process and I haven't heard anything that indicates that we shouldn't get those fundamental things.

So, you know, I'm happy to answer any questions. We're happy to move as quickly as Your Honor will give us. I asked for 30 days. We'll accept July 4th if Your Honor is not inclined to give us the full 30 days, but we'd like some period of time. No one else has to get that period of time. I'm the only one right now raising this objection. If they make me -- our client (indiscernible) satisfied, then we'll consent and it will be over. But I'm not comfortable being in the position

where someone has announced the day before a hearing very little information is provided and there is a very compressed time frame within which we can get the information that we need to do our fiduciary duties to our clients to figure out whether this is the right thing to do. I don't think that's a big ask.

Thank you very much.

THE COURT: Okay. All right.

I think, Mr. Feinstein -- we need to -- I need to move this on.

MR. FEINSTEIN: For the record, Robert Feinstein. I hope I can make a constructive suggestion.

THE COURT: Okay.

MR. FEINSTEIN: There are ten days left in the challenge period. We were unable to talk to Mr. Glenn when we were in the midst of negotiations because it was all 408 discussions. The terms are now disclosed. The Committee, including the indentured Trustee for that billion dollar bond issue which Mr. Glenn's clients hold, fully supports the settlement as being in the best interest of the creditors of the estate.

THE COURT: But he's saying they didn't give him any information.

MR. FEINSTEIN: Right. So, my constructive suggestion is this, Your Honor. Let's leave it at the ten days. And I just heard, really, for the first time that Mr.

Glenn has an NDA with the estate. If we can have an NDA with the Committee, we will show him our lien perfection remote, because we did the analysis.

I've already noted for the record that all of these litigation claims that are part of the sharing formula were unencumbered on the petition date before the roll-out. There's no dispute as to that. And Mr. Glenn probably understands the UCC as well that there's no lien on those assets on the petition date but a lien was granted on the roll-out.

So, we can meet with Mr. Glenn now that this is public and we're not bound by 408 discussion on a settlement that hadn't been concluded, and we'll give him a download and he can make a judgment whether to seek an extension of the ten-day period that's baked into the order, risking the reserves, and we'll impress upon him the importance of having those reserves available to the estate because, again, one of our big concerns was administrative solvency.

THE COURT: I was looking for the right to request an extension of the challenge period.

MR. FEINSTEIN: I'm working from memory that there's an extension for cause shown provision in there.

MR. HILLMAN: There's not.

MR. FEINSTEIN: There's not? Okay.

THE COURT: That's why I couldn't find it

MR. FEINSTEIN: Okay. Well, what can I tell you? We

will give him a hurry up education in the ten days and, hopefully, he'll come to the conclusion that the indentured trustee for his billion dollar bond issuance did with the benefit of being a fiduciary on the Creditor's Committee, being a fiduciary to the note holders as an indentured trustee and explain the judgment that was reached and why this is a very favorable deal for unsecured creditors who would otherwise get wiped out. And, again, if he impacts the release of the reserves, we've got a big problem in the bankruptcy case.

So, I hope in the next ten days we can impress upon him all the benefits of the settlement, the results of our lien search and so forth and I guess he can draw his conclusions from there. But we're happy to provide that now that this is public. We couldn't before.

THE COURT: When is our next hearing date on -- I know there's one on the 21st which is just a week away. Is that right?

MR. FEINSTEIN: June 27th, Your Honor.

THE COURT: Twenty-seventh?

MR. FEINSTEIN: Yeah.

THE COURT: Oh, that got moved again, right? That's the --

MR. FEINSTEIN: Yeah, it's the sale hearing date on the 27th.

THE COURT: Okay. So, what I'm going to do is I'm

going to give -- I'm going to include that they can request an extension of the challenge date for cause for a period to July 4th by no later than June 25th. And I'll deal with it on the 27th if need be. But I'm basing that on the representations that were made that now that there are non-disclosure agreements in place or will be in place and information will be provided, I will grant an extension of that date for the challenge for cause shown but not beyond the July 4th date, in any event, so that everybody has a chance and the bond holders can, I would say, further examine this because I know it's true that this deal was just presented today.

But the bond holders did have representation on the Committee and for whatever reason, the information was, you know, as I understand it, because of the fiduciary obligations and lack of a NDA at the moment with the Committee was not disclosed. Well, now there is going to be an NDA and the disclosure is going to come.

So, you have ten days to try to, you know, to go through that information and if there is not -- if the bond holders are not satisfied, they can ask for an extension on June 25th by short letter as to why -- for cause, why someone -- why they need more time, not just that an extension will be granted.

MR. HILLMAN: Can I ask a question, Your Honor?

THE COURT: For the record, David Hillman, Proskauer

Rose. You asked me -- you asked the courtroom was there a for cause extension. I said there wasn't. In the DIP order, in the challenge period, Paragraph 43 on Page 96 of the red line -- let me know when you're at that page.

THE COURT: Ninety-six you said?

MR. HILLMAN: Yeah, 96 of the red line.

THE COURT: Uh-huh.

MR. HILLMAN: Do you see there is some red line in the middle, towards the bottom?

THE COURT: Right.

MR. HILLMAN: Right after the red line it says the filing of a motion seeking standing to file a challenge before the expiration of the challenges, which attached as a proposed challenge, shall extend with that party for two days until after the Court deals with the standing motion. And so the question I ask, there is already a provision dealing with a party in interest who wants to do something before the challenge period. Can the existing language, which is part of the negotiated deal which, admittedly, is a heavier burden than what you just described, I would ask you to allow the parties to at least have what's already imbedded in the order as opposed to simply a letter, quote, for a cause?

That's a request that will allow at least the parties to go back to their respective clients and say nothing changed in the order and it gives Mr. Glenn the opportunity to

do -- there's an escape hatch that's already built into the order. Admittedly, you have to, you know, put your money where your mouth is and come up with a motion for standing and attach the proposed challenge. That's my request to Your Honor -- to stick with the four corners.

THE COURT: But if the answer is that they don't have the information to make a challenge, then what happens?

MR. HILLMAN: I think that what I've heard, and I won't belabor the record, I will respect Your Honor's ruling, just what I heard was there will be full cooperation from the Committee to share the information. And I would ask if the Committee can make that happen in the next 24 and 48 hours so that there's at least eight days on the clock and they have the information.

MR. FEINSTEIN: Subject to a confidentiality agreement with the Committee, we're fine with that.

THE COURT: Okay.

MR. GLENN: Your Honor?

THE COURT: Yes?

MR. GLENN: I will live with that for July 4th but ten days -- to have a motion ready in ten days to extend? And I'm not sure what Mr. Hillman's looking for in that motion. I don't see the difference between a letter and motion. If the cause is I need more time and more information, you know, a short letter versus a motion, I don't understand why, you know,

as the party with a ten-day period has to be put to a -- to that higher burden. July 4th I understand -- that was the challenge period to begin with, but since we're compressing the time, I think there should be some relaxation and we should go with Your Honor's suggestion.

MR. HILLMAN: I would beg for the Court's indulgence. Let's take up the Texas Taxing Authority . Maybe there will be an opportunity after that discussion to take a five minute recess. And I think what I will go back to our clients with is July 4th with the language that's in the DIP order of filing a motion seeking standing, attaching the proposed challenge which is far more than a letter saying I need some more time versus ten days. I would like to ask the clients that question.

THE COURT: Okay.

MR. HILLMAN: And I think if that gives us an opportunity to at least take a breath to evaluate next steps. Is that acceptable?

THE COURT: That's acceptable to me.

MR. HILLMAN: Thank you, Your Honor.

THE COURT: Absolutely.

MR. FIEDLER: So, Your Honor, for the record, Ross Fiedler of Kirkland and Ellis on behalf of the debtors, next is the Texas Taxing Authorities' objection.

THE COURT: Right.

MR. FIEDLER: You know, Your Honor, we deal with this

on many cases and often, most often, we get to a resolution. So, really hoping we can get there today. We've been in discussions with their lawyers for the past week or two on language, but the crux of the objection is, you know, the taxing authorities assert $5 million worth of pre-petition tax claims that are secured by the debtors' tangible property in Texas. They argue that the DIP motion fails to demonstrate that the authorities are adequately protected to the extent the motion seeks to prime their liens through the DIP liens and the adequate protection liens.

So, further, they've asked that the debtors establish a segregated account to reserve funds for any collateral subject to their liens. So, the debtors and the DIP lenders don't necessarily disagree but I'll let Mr. Hillman speak to that. We agree that they hold, you know. secured tax claims against the estate. What the amount is is still undetermined. In the last week we've received a breakout of their claims for both estimated 2023 and backdated taxes from 2022 and, I think, two years before.

So, there needs to be a reconciliation process to determine what their actual claim amount is but that's besides the point because the authorities are already protected by what is in the DIP order currently. First, the DIP budget already provides for the payment of these sort of tax claims. And the taxes order that we got at the first day hearing gives the

debtors the authority to make those payments. But more importantly, we already have reserve accounts, as we've discussed, that cover these sorts of tax claims.

We have a priority claims reserve and a WARN reserve and a wind down reserve. And as we discussed, the priority claims reserve is going to be collapsed with the WARN reserve such that you have $26 million worth of value to be distributed to, you know, claim holders with allowed claims such as the Texas Taxing Authorities.

So, there's no need for an additional reserve. We already have the reserves in place and we've agreed that the Texas Taxing Authorities' liens, you know, to the extent there's any shortfall in the DIP budget, we'll attach to the reserves. And so we already have the, you know, segregated reserve and there's no reason to establish what is now going to be a forth reserve just because a party is requesting it.

THE COURT: All right.

MR. BAUCHNER: Good afternoon, Your Honor, Joshua Bauchner with Ansell Aaron on behalf of the Texas Taxing Authorities. If I may be heard?

THE COURT: Yes, of course.

MR. BAUCHNER: Thank you, Your Honor. With me is Ms. tara Grundemeier who has an application for a pro hac vice admission pending and, with your permission, she will address the issue?

THE COURT: Yes, absolutely. There's no concern about that.

MR. BAUCHNER: Thank you.

MS. GRUNDEMEIER: Good afternoon, Your Honor. Tara Grundemeier on behalf of the Texas Taxing Authorities. Appreciate you allowing me appear via Zoom from Texas.

THE COURT: No problem at all. And pro hac for today -- you already have the application.

MS. GRUNDEMEIER: Thank you, Your Honor. The Texas Taxing Authorities filed their objection at Docket Number 283. Some of the representations are correct, some of them I would like to explain a little bit further. The Texas Taxing Authorities' liens is correct, they are senior secured tax liens. They prime all other lien holders pursuant to the Texas Tax Code, so they are the number one creditor to be paid. And to have the Texas tax liens to be paid from a priority reserve that is for priority tax claims, administrative claims that don't even address the secured tax liens -- the secured tax liens are not priority tax claims. They're not administrative claims. So, arguably, the secured tax claims don't even belong in this reserve.

Number (2), how do we know, how do my clients know, that there is going to be enough money left after you pay the WARN claims? Whatever those amounts are going to be, whatever the other priority claims are going to be, whatever the other

administrative claims are going to be, there's going to be enough money left to pay my client's senior secured tax claims.

You heard on the record today that the ABL has been paid, a creditor that has a lien behind the tax liens has been paid. The FILO liens are going to get paid, and I don't understand how it is equitable that you allow a senior secured tax claim to not -- to have to attach it to Code C in a general nature, just sitting in the debtors' coffers, that can be spent on admin expenses and other claims without those funds being reserved for the taxing entities.

I think that Section 363 is clear that if a secured creditor objects to the use of their cash collateral, they have to be adequately protected and I think to adequate protect the tax claims, a reserve should be set up, set aside just for the (indiscernible) tax entities in Texas.

This reserve is not an absolute. It doesn't say that the claims are going to be allowed in this amount, and allowed for a reconciliation. It's not a cap but it's also not an allowance for the claim. The debtors have their opportunity to do a reconciliation as long as they need to, but those funds will be reserved for the tax entities so that we can ensure that there's enough money to pay the taxes.

THE COURT: Okay. And so you're saying that you're not adequately protected because you're not sure that there's sufficient funds in between the budget and these reserves which

they're granting you a lien on to pay the 5 million?

MS. GRUNDEMEIER: That's correct. I understand these taxes are in the budget but, Your Honor, where is that money? Is it being spent on other fees? On other expenses -- professional fees?

THE COURT: Okay.

MR. FIEDLER: Your Honor, if I may?

THE COURT: Yes.

MR. FIEDLER: Just a few points. On the first point about the priority claims reserve, and if you look at the language which was heavily negotiated, it includes Chapter 11 administrative expense claims, priority and other claims. So, there's no saying that the secured tax claims of the Texas Taxing Authorities don't fit squarely within that definition.

The second point I'd make is we have represented that the budget accounts for the payment of these sort of claims. Obviously, we need to go through the reconciliation process. But whatever shortfall there is, we've already agreed to grant -- to attach their liens with the same priority as before to the reserves which will be unencumbered by any other lien. And so they have first dibs on those reserves and there's no reason to put more money at stake for a separate reserve than what has already been reserved for by the DIP lenders and the debtors.

THE COURT: How much is in the priority claims

reserve?

MR. FIEDLER: We have ten million.

THE COURT: Okay. All right.

MS. GRUNDEMEIER: Your Honor, if I may, of that ten million, just for the tax claims alone it's about $5.4 million for just the Texas tax claims.

THE COURT: This is half of that, yes.

MR. FIEDLER: Well, subject to the reconciliation. I mean, we just received breakouts and part of the tax claims are for estimated 2023 tax claims which still need to be worked through with our financial advisor. And that process is undergoing right now. But we imagine that number is going to be slightly lower.

THE COURT: All right. Well, I understand the position of the Texas Taxing Authorities and I think the provisions that have been made here in Paragraph 61 do, in fact, provide adequate protection and segregate the funds in some respect. The adequate protection is in the form of the civil forms -- it's in the budget to pay claims like this. It's in the priority claims reserve and that does include secured claims, as just represented on the record. And then there's also the lien that attaches to not only the priority claims reserve but the Warn Act reserve which is another -- I'm not sure exactly how many millions are in the Warn Act reserve but --

MR. FIEDLER: Sixteen.

THE COURT: -- it says it right here.

MR. FIEDLER: Sixteen, so it's 26 in total.

THE COURT: So, it's 26 million and change. To me, that's adequate protection while the claims get reconciled.

MR. FIEDLER: Thank you, Your Honor.

MS. GRUNDEMEIER: Your Honor, if I could just talk about Paragraph 61, at your indulgence? If you look towards the end of that paragraph and it says the Texas tax liens shall be paid by the debtors and shall attach the priority claim reserve and WARN reserve to the extent of any shortfall. So, I think that's unclear. Are the debtors going to pay the tax claims from sale proceeds and to the extent of any shortfall from any sale proceeds, then are the taxes being paid from the reserve?

THE COURT: You --

MS. GRUNDEMEIER: That's number one. And number two --

MR. FIEDLER: If there's any shortfall in the DIP budget for the purported claims that the Texas Taxing Authorities are asserting, then the liens will attach with the same priority as before to the reserves which, again, 26 million far exceeds the -- what we think is going to be a claim in between two and five million.

THE COURT: So, Ms. Grundemeier, I think he's saying

-- and maybe if it requires a little bit of tweaking to the language, he is saying that it's going to be paid. It was in the budget but to the extent there is any shortfall in the budget, it attaches to the priority claim reserve and WARN reserves in the same priority.

MS. GRUNDEMEIER: Thank you, Your Honor. And so from what I heard, representation made by the debtors' counsel, that the tax claims will be paid first from these reserves.

THE COURT: I'm not sure he said that. I don't think he said that. He said it's going to be paid in the same order and its priority in which you have the lien. I didn't think he said paid first.

MS. GRUNDEMEIER: Well, perhaps I misunderstood but I believe they were --

THE COURT: Did you say that, sir? I don't --

MR. FIEDLER: No, you accurately represented. And I think the language stands on its own.

THE COURT: Yes. I mean, but I understand what Ms. Grundemeier is saying is that -- can you just change the words to say that shall be paid by the debtors in accordance with the budget. And to the extent there's any shortfall in payment to Texas, its lien, shall attach to the priority claims reserve to the extent of the shortfall?

MR. FIEDLER: Yeah, that works, Your Honor. That's the intention of the language, so, we'll add that.

THE COURT: I think it kind of says that anyway but I understand Ms. Grundemeier's position and think those are just by way of clarification, really.

MR. FIEDLER: So, Your Honor, I believe that was the last issue on the DIP order, so, unless you have any --

THE COURT: Well, I know they're not five million, but what about Maricopa County?

MR. FIEDLER: They are accounted for in this language, I believe, in the footnote, their entities should be accounted for. Let me pull it up.

THE COURT: I know you said -- I didn't see that particularly, but I might not have caught it. I know you said that earlier.

MR. FIEDLER: Let me collect on our side and just make sure that they're accounted for in this footnote. But if they're not, we'll make sure they're included.

THE COURT: Okay. So you were talking about --

MR. FIEDLER: Footnote 16.

THE COURT: Yes, I didn't read all those counties to be honest with you.

MR. FIEDLER: Neither did I. They've got to be in there somehow -- but we'll make sure they're in there, Your Honor.

THE COURT: All right. Well, I think, certainly what's good for the $5 million Texas claim is good for the

Maricopa County 49, or so thousand dollar claim.

MR. FIEDLER: That's right, Your Honor.

THE COURT: Okay.

MS. GRUNDEMEIER: Your Honor, just looking through the definitions, I don't think Maricopa County is included.

THE COURT: I'm sorry, Ms. Grundemeier?

MS. GRUNDEMEIER: I was looking through the definitions of the counties and I don't believe Maricopa County is included in the footnote. Not that I represent Maricopa County, but --

THE COURT: You're in the government general protection mode. I understand.

MS. GRUNDEMEIER: Indeed.

THE COURT: Yes, but you know what, they can do a search and if it's not there, then they got to put it in, that's it, very simple.

MR. FIEDLER: Okay. Thank you, Your Honor.

So, I believe we have more issue on the --

THE COURT: We have one item left from the DIP financing cash collateral. Mr. Herman (sic) was going to talk to his client about a recommendation, and then we certainly have to give Mr. Allen (phonetic) a right to be heard.

MR. HILLMAN: Your Honor, David Hillman, Proskauer, it's five to 12. I think I --

THE COURT: Five to 1 I have.

MR. HILLMAN: Oh, you're right, five to 1. We don't need a long break but I would appreciate the Court's indulgence for a 15 minute break and then we can knock on your chambers' door and reconvene and I can tell you where I've landed with the clients and take it from there?

THE COURT: Absolutely. Not a problem for me.

MR. HILLMAN: So, that brings us --

THE COURT: But I think we should finish what we have here, right? We should finish what we have on the agenda and then just leave that one item for a little later.

MR. FIEDLER: Great, Your Honor. That was going to be my suggestion. Thank you.

THE COURT: Oh, there you go.

MR. FIEDLER: So, if we move, then, to Agenda Item 2, this is the AlixPartners' retention application. It's to retain AP Services, LLC to designate Holly Etlin as the chief restructuring and chief financial officer effective as of the petition date. The application was filed at Docket Number 350. A supplemental declaration was filed in support of the application at Docket Number 621.

So, at this time, I'd like to submit Ms. Etlin's declaration into evidence.

THE COURT: Any objections? Any one wish to cross examine the declaration -- the witness making the declaration?

Having heard no response, I will admit it into

evidence.

MR. FIEDLER: Thank you, Your Honor. So, Your Honor, we have submitted a consensual form of order to your chambers that's incorporated comments we've received from the United States Trustee. I believe we're fully resolved, so, unless you have any questions, we'd, respectfully, request entry of the order.

THE COURT: No, I saw that that was the representation. I'll ask Ms. Steele if she wishes to be heard?

MS. STEELE: Yes, Your Honor, thank you. Good afternoon. Fran Steele on behalf of the U.S. Trustee. No, Your Honor, the U.S. Trustee and counsel did agree to the form of order and, with that, the U.S. Trustee has no objection.

THE COURT: All right. Well, I'm not going to interfere with the parties' positions on this and, you know, they're certainly a necessary part to get this restructuring concluded or this reorganization concluded as quickly as possible. And I'll approve the application.

MR. FIEDLER: Thank you, Your Honor.

The final item on the agenda is going to be handled by my colleague, Ms. Acuna, which is the World Market assumption and assignment motion.

THE COURT: Okay. Thank you.

MS. ACUNA: Good afternoon, Your Honor. Olivia Acuna of Kirkland and Ellis on behalf of the debtors.

THE COURT: Good afternoon.

MS. ACUNA: And I will note that my pro hac application is pending and just wanted to request permission to proceed?

THE COURT: You have that permission.

MS. ACUNA: Okay. Great. So, the final item on today's agenda is the debtors' motion to assume and assign certain unexpired leases. And that motion is filed at Docket Number 428. And pursuant to this motion, the debtors were seeking authority to assume and assign ten unexpired leases to World Market, LLC. But as reflected in the revised proposed order that was filed on Monday at Docket Number 705, we're adjourning the motion with respect to one of the leases identified as Store Number 6383. So, pursuant to the revised proposed order, the debtors are seeking to assume and assign nine leases to World Market, LLC.

We did receive other informal comments from certain parties and all of these comments have been addressed in the revised proposed form of order.

So, unless Your Honor has any questions, the debtors respectfully request that the Court enter the revised proposed form of order filed at Docket Number 705.

THE COURT: Right. This one is the leases that, really, World Market is agreeing to pay the cure costs and it's not really any consideration, any separate consideration being

provided for the assumption and assignment.

MS. ACUNA: That's correct, Your Honor. They're currently the sub-lessees in each of these stores.

THE COURT: All right. Does anyone wish to be heard on this application?

Having heard no response -- again this seems like a very appropriate exercise of the debtors' business judgment, and it's also been vetted by the Committee and the banks, and I will approve the motion.

MS. ACUNA: Great. Thank you, Your Honor, and thank you to the World Market counsel for their help in this process.

THE COURT: Okay. Thank you.

All right. So, Mr. Glenn, I think you heard that Mr. Herman (sic) is going to talk to his client about the date that we've been discussing. And I guess -- I don't know if he's already out discussing but -- and then I don't know if it makes sense for then Mr. Herman (sic) and Mr. Glenn to speak and whether you need to get anyone else involved before you come back to me, or you just want to come back to me?

Why don't you propose that? Why doesn't someone propose that to Mr. Herman? And you'll let us know when you need to come back.

MR. FIEDLER: Great. Thank you, Your Honor.

THE COURT: Thank you.

(Off the record)

THE COURT: Good afternoon. We are back on the record on the Bed, Bath & Beyond case. And I first have to apologize to Mr. Hillman because I've been saying Herman. And it's pointed out to me that it's Hillman. Apologies.

MR. HILLMAN: No, no, all good. I appreciate that, Your Honor. David Hillman, for the record, Proskauer Rose, counsel for the DIP agent and FILO agent. Appreciate the break. We used it productively.

I spoke to our client. I also spoke to Mr. Glenn. And I'm pleased to report that we took your commercial practical suggestion, tweaked it a little bit, and we have a path forward that I think is agreed on all major points and there's probably one quasi-substantive point that I'd like to be heard on.

So, we're dealing with the challenge period and, as you know, the challenge period current structure is ten days from the date the Court enters the order or July 4th -- the earlier of those dates. So, we know that July 25th is, in effect, the current challenge period, based on the form of the order.

So, first, the ad hoc group will receive a diligence package, a care package, from the Creditor's Committee within 24 hours after Mr. Glenn's clients sign an NDA with respect to the information. The Creditor's Committee counsel has told me during the break that they will use commercially reasonably

efforts to cooperate with Mr. Glenn and his clients to give them information as it relates to understanding whether there are any potential challenges to be asserted.

The ad hoc group, if they are seeking an extension of the June 25th challenge period, they can do so by filing a letter, a notice, a motion -- whatever it is that Your Honor would prefer as to the vehicle for that extension, citing cause for an extension. The outside date of that extension sought, or any extension granted, would be July 4th.

So, we would have a hearing if such a request for an extension was made. We would have a hearing on that on June 27th, obviously, they would have to seek the extension before June 25th. We would have a hearing on June 27th. If there were an extension for cause of the challenge period, there would also be an extension of the reserve release date.

So, for example, the reserve release date currently is set at ten days after the Court enters the order. If Your Honor grants a two-day extension, the reserve release date would also be extended by two days. The place where I think Mr. Glenn and I may have a disagreement is what does he need to do to convince Your Honor that there is cause for an extension. We would suggest to the Court that he gives some indication as to what the open issues are and the potential challenges are. Something less, admittedly, than a full-blown standing motion but something more than we need more time.

I think Mr. Glenn is fearful of tying his hands to a standard before he knows what cause is but I would just ask Your Honor to apply what -- I will defer to Your Honor if you -- I think you are ready and able and capable to determine what's cause. And so I don't know if we have to legislate what it is but I want to make clear that it's -- you know, the reason why I say we need more time, that rings hollow to me because they appeared at the first day hearing in this case and I can remember Mr. Glenn's partner was on the Zoom and I think he made a comment that he couldn't travel from Connecticut to New Jersey. They've been on scene.

And so I know Mr. Glenn has made a point of there's only ten days left on the clock, but I would submit, Your Honor, there's been I don't know how many days since the case was filed -- almost 60 days. There's been a lot of time that has already run off the clock. So, I don't want anybody to be surprised -- just more time is going to be met with a vociferous objection.

THE COURT: How about good cause shown as determined by the Court?

MR. HILLMAN: I can't argue with that.

THE COURT: Mr. Glenn?

MR. GLENN: Yeah, that's fine with me, Your Honor. I don't know the extent of the cooperation, the speed of the cooperation that I'm going to receive. I don't know what

information there is. So, I understand -- I think we all understand what's on the table now and I've already issued information request to Kirkland. I've asked for the NDA from the Pachulski firm. And so, we're going to work as fast as we can. Not knowing what's out there, I'm not going to pre-agree to any specific standard for cause. I understand I have to persuade Your Honor.

THE COURT: Yes, I understand all of that, but on both ends, like, there's countervailing points that are being made. Number (1) is that the bond holders have been on the phone, or have been involved, since the beginning. That is true. And I'm not inclined -- and, well, you guys already agreed to it so I'm not going to say anything more.

Number (2) is, though, that apparently for valid reasons that you really haven't gotten the information that you wanted t see yet and I will -- and I think, you know, with a non-disclosure you should see it and that will be fine.

So, I think this is a good way to address those issues in a very limited period of time and allow the process to work itself through a little bit. But I'm going to consider all the factors and I just have to remind everyone that this is, you know, as I understand it, the deal is that whether the reserve date gets extended -- reserve release date gets extended or not and whether or not a challenge is filed -- I guess this is to you, Mr. Hillman, and whether or not a

challenge is filed, the reserve is going to be released on whatever date that is. Was I clear on that?

MR. HILLMAN: Allow me just to restate what I think you've said. In this hypothetical where there's an extension of the June 25th challenge date, not until after July 4th, and a challenge is met. And there are very specific rules as to what one must do to make a challenge. And we're not going anywhere near what those provisions in this final order say. They say what they say and there's a very high standard and if that standard is satisfied and if there is a challenge, you are correct that there is -- the reserves no longer are forfeited upon a challenge but they are going to be delayed.

THE COURT: By whatever the extension is.

MR. HILLMAN: We're talking about ten days here --

THE COURT: Yes. Yes.

MR. HILLMAN: And I am very confident, and I'll just say this and sit down, there won't be a challenge here and we'll see what happens in the next ten days.

THE COURT: Yes. Well, you stole my thunder a little bit because I don't think Mr. Feinstein and Mr. Sandler and their team, or the debtors made what they felt was a bad or unfair deal and I'm looking at this in a broad context, so, you know, everyone will do what they have to do but I'm considering all those things.

And by the way, it doesn't have to be a motion. It

can be, like, a two or three page letter requesting the extension and saying why and you can submit a two or three page letter in response. Or -- I'm not setting a limit, I'm just saying it doesn't have to be a full-blown motion, you know, or a hundred page order or anything like that.

It's just -- I'll keep it simple and anyone can respond. In other words, it sounds like there might be -- if Mr. Glenn says I didn't get this from the Committee, then the Committee might want to respond. So, whoever needs to respond will respond -- or, I didn't get this from the debtor -- I don't know, whatever.

MR. HILLMAN: Thank you, Your Honor, appreciate your time.

THE COURT: All right.

Mr. Glenn, are we good?

MR. GLENN: Thank you. Yes, Your Honor, thank you.

THE COURT: We're good. All right. So, then we just need a slightly revised order to reflect that small change but, nonetheless, significant one and also a slight tweak in the Texas order language.

MR. FIEDLER: Great. Thank you, Your Honor. I think that's it for today.

THE COURT: Thanks so much. Again, I'm repeating myself, and I can't emphasize enough how much I appreciate all the effort that must go into this by the parties and how you

are achieving this in a very professional and competent but also arm's length matter that if I was every convinced that parties are fully well represented and negotiating to the best of their ability to get the best deal they can for the clients, here we are. This is the case. Okay?

MR. FIEDLER: Thank you, Your Honor. We appreciate that.

THE COURT: Thank you very much. Have a good afternoon and we'll see you soon -- 22nd.

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C E R T I F I C A T I O N

We, ALYCE H. STINE and MARY POLITO, court approved transcribers, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, and to the best of our ability.

/s/ Mary Polito

MARY POLITO

/s/ Alyce H. Stine
ALYCE H. STINE

J&J COURT TRANSCRIBERS, INC. DATE: June 19, 2023